

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 221 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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THE STATE OF GUJARAT

Versus

REVABHAI HIRABHAI VANKER

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Appearance:

MR KC SHAH, APP, for Petitioner

MR BS SUPEHIA for Respondent No. 1, 2, 3, 4

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 31/08/98

ORAL JUDGEMENT

1. This criminal appeal arises out of a judgment and order recorded by learned Judicial Magistrate, First Class, at Himatnagar, on 30.12.1989, in Criminal Case No.648 of 1986.

2. The facts of the present case are that the present respondents, who were accused before the learned Judicial Magistrate, First Class, were charged to have committed criminal trespass and mischief by ploughing the

field of the complainant on 3rd July, 1986, at about 8 a.m. As per the prosecution case, the respondents illegally entered into the field of complainant Kodriben Devshankar and ploughed the field which was already cultivated for Udad and corn. The complainant, therefore, lodged a complaint with the Shamalaji Police Station. The police, after registering the offence, investigated the case and filed charge sheet before the learned Judicial Magistrate, First Class, at Himatnagar. After framing the charge against the accused persons, the learned Judicial Magistrate proceeded with the trial and considering the evidence, ultimately, acquitted the accused persons. Being aggrieved by the said judgment and order, the State has preferred this appeal.

3. Heard Mr. K.C. Shah, learned Public Prosecutor and Mr. Supehia, learned advocate for the respondents.

4. Mr. Shah has reiterated the grounds stated in the memo of appeal and has urged that the judgment and order impugned in this appeal may be set aside and the accused persons be convicted for the offences with which they are charged.

5. Mr. Supehia, on the other hand, has urged that, admittedly, there is a civil dispute going on between the parties which is not finally concluded by appropriate authority and, therefore, mens rea cannot be imputed against the accused persons. The learned Magistrate, therefore, has rightly acquitted the accused persons. The appeal may, therefore, be dismissed and the judgment and order of learned Judicial Magistrate, First Class, may be confirmed.

6. Upon perusal of the record and proceedings, it transpires that the prosecution has examined Kodriben Devshankar, complainant, at Ex.40. If her deposition is perused, she states that the incident occurred four years prior to the date of recording of her evidence. She says that the accused persons entered her field. She says that she had sown the crop of Adad. She, therefore, lodged the complaint Ex.41. She is cross-examined by the defence. The next witness who is examined is Vadansinh Mulsinh, at Ex.48. He is the Panch of the place of offence and he says that Adad and corn were cultivated in the field of Kodriben Devshankar. He states that the complainant told them that the crop was cultivated by the accused persons. He also is cross-examined, but no material information comes out of his deposition. Third witness is the Investigating Officer, Mohabatsinh Kansinh Makwana, at Ex.50.

7. The only piece of oral evidence is in the nature of deposition of complainant herself. If that is perused, she only states that the accused persons had entered the field. She speaks nothing about any mischief by any of them. In cross-examination, she admits that her lands are managed by one Prabhashankar Devshankar, who stays at Bombay and has never cultivated the land. She denies the suggestion that the land was given to the accused persons for cultivation on crop share basis for the last about 10 to 15 years, but she admits that a litigation in this regard was initiated by the accused persons before the Mamlatdar and the Mamlatdar had declared them as tenants. The said order was challenged in appeal by the complainant. The appeal was allowed and the matter was remanded to Mamlatdar for retrial which is still pending. Copy of judgment of Deputy Collector is produced at Ex.44, which also supports the suggestion that the case is remanded by the Deputy Collector to the Mamlatdar for retrial and decision afresh.

8. The outcome of the above discussion and evidence is that there is a bona fide dispute of civil right existing between the parties which is subjudice before the appropriate authority. It, therefore, cannot be said that the accused persons had a criminal intention behind entering into the field. On the contrary, it transpires from evidence of Panch that the complainant herself had disclosed at the time of making of Panchnama that the accused persons had cultivated the land and, therefore, it cannot be said that the accused persons-present respondents had committed criminal trespass as envisaged under Section 447 of the Indian Penal Code. There is no evidence of any mischief being committed by accused persons and, therefore, there is no error committed by the learned Magistrate, Himatnagar, while recording the judgment of acquittal against the present respondents. There is no error or illegality found in the judgment and order. The appeal, therefore, must fail and is, therefore, dismissed. The judgment and order of the learned Judicial Magistrate, First Class, in Criminal Case No.648 of 1986, dated 30.12.1989 is hereby confirmed.

[ A.L DAVE, J. ]